

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7273 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LG PRAJAPATI & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR MM PRAJAPATI for Petitioners

MR DA BAMBHANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/98

ORAL JUDGMENT

Heard the learned counsel for the parties.

2. The petitioners were appointed on the post of Agricultural Assistants in the year 1980 and all of them are working at present in the office of the Assistant Director of Agriculture (Soil Conservation), Himmatnagar. The grievance of the petitioners are that though they

have completed more than nine years' service, the benefits of higher pay scale have not been extended to them. The defence of the respondents is that as per the Government Resolution dated 5.7.91 and the norms settled thereunder and the revised policy decision taken by supersession of the said Resolution, the petitioners are not entitled for the higher pay scale as the criteria for higher pay scale is strictly in terms of the service counted for promotion purpose and strictly in terms of eligibility criteria provided for promotion. As per the clarification made by the Government, the seniority is to be counted only for the regular services and on the basis of Division wise seniority. The petitioners are stated to be transferred from one Division to another Division on their giving of undertaking for loss of seniority and as such, it is stated that they cannot be given any benefit.

3. The order of transfer of the petitioners, made on 29th May 1982, from one Division to another Division, has been produced on record, wherefrom I find that these transfers were not made on the request of the petitioners. The learned counsel for the respondents admitted as a fact that on their transfers, the petitioners were given T.A. & D.A. as well as joining time. So in absence of anything in the order of transfer regarding the fact that the said transfers have been ordered on the request of the petitioners themselves, and further that the same are subject to a condition of losing of seniority, the only presumption is that this order has been made for administrative reasons. Further, the fact that the petitioners were given T.A. & D.A. and joining time, supports the presumption that this order of transfer cannot be said to have been made on request of the petitioners. In these facts, heavy burden lies upon the respondents to show that the petitioners have given undertakings for losing of their seniority on transfer. No undertakings, as alleged to have been furnished by the petitioners, have been produced on record of the Special Civil Application and further the learned counsel for the respondents very fairly conceded that no such document is available in the service record of the petitioners also. However, the learned counsel for the respondents contended that there is a reference of this fact in some other document, but in absence of original document, it is difficult to accept the theory propounded by respondents that the transfer of the petitioners was on their request, only on the basis of some other document in which reference of undertakings furnished by petitioners, is made, more so, when the order of transfer nowhere contemplates that the transfers

have been made on request and subject to losing of seniority.

4. In the result, this Special Civil Application succeeds and the same is allowed and the respondents are directed to consider the cases of petitioners for giving of higher pay scale from the date on which they have completed nine years' service as Agricultural Assistants, within a period of three months from the date of receipt of copy of this order. In case the petitioners are found entitled for giving them the higher pay scale, the arrears thereof shall be paid to them within a period of two months next. Where the petitioners are not found suitable for giving them the benefits of higher pay scale, a reasoned order may be passed and a copy of the same may be sent to the petitioners by registered post A.D. It is a case where the low paid employees have unnecessarily been harassed and have been put in such a condition where they were constrained to approach this Court for the relief which should have been granted by respondents on their own. These are the low paid employees and whatever the costs incurred by them for filing of this Special Civil Application is certainly a burden which they had to bear due to inaction or omission or arbitrary approach on the part of respondents. The learned counsel for the petitioners submitted that the total expenses incurred by petitioners in prosecuting this litigation is Rs.3,000/-. The respondents are directed to pay Rs.1,000/- as costs to each petitioner. Rule is made absolute.

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(sunil)